

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

BEVERLY AHNERT, individually and as Executrix
of the Estate of DANIEL AHNERT, Deceased,

Plaintiff,

Case No.: 2:10-cv-156
Hon. Pamela Pepper

Remanded from E.D. PA 10-cv-67443

v.

EMPLOYERS INSURANCE
COMPANY OF WAUSAU, et al.,

Defendants.

**MOTION FOR JUDGMENT ON THE PLEADINGS BASED ON THE
DOCTRINE OF RES JUDICATA/CLAIM PRECLUSION
BY FOSTER WHEELER, LLC**

Defendant, Foster Wheeler, LLC, by its attorneys, Celba, LLC, pursuant to Fed. R. Civ. 12 (c), hereby moves for judgment on the pleadings based on the doctrine of res judicata/claim preclusion. As grounds for its motion, Foster Wheeler states as follows:

The doctrine of res judicata/claim preclusion provides that a final judgment on the merits bars parties from relitigating any claim that arises out of the same relevant facts, transactions or occurrences.

Plaintiff has filed two lawsuits alleging that Foster Wheeler is liable for asbestos exposure to decedent, Daniel Ahnert that caused him to develop asbestos-related diseases. In the present case, Case No.: 2:10-cv-156, plaintiff claimed a diagnosis of non-malignant asbestosis. In a lawsuit filed in 2013, Case No.: 2:13-cv-1456, plaintiff claimed a diagnosis of both non-malignant asbestosis and malignant mesothelioma. The 2013 was

dismissed on its merits as to Foster Wheeler by Judge Charles N. Clevert, Jr. on January 3, 2016. Since, the 2013 was inclusive of the non-malignant asbestosis and was dismissed on its merits, plaintiff is barred by the doctrine of res judicata (now known as claim preclusion) from litigating the same claim in the present case.

WHEREFORE, for the foregoing reasons and those set forth in the memorandum of law filed in support of this motion, Foster Wheeler, LLC respectfully requests that judgment on the pleadings be granted and an order issued dismissing all claims asserted against it in this matter.

Dated this 22nd day of April, 2016.

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